

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:
ANA J. ESTRADA
3029 E. Illinois Ave.
Fresno, CA 93701
**Pharmacy Technician Registration No.
59881**

Respondent.

Case No. 4765

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 21, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4765 against Ana J. Estrada ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A).
2. On or about August 5, 2005, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. 59881 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4765 and will expire on July 31, 2015, unless renewed.

1 3. On or about November 7, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4765, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 3029 E. Illinois Ave.
8 Fresno, CA 93701.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. No documents were returned by the U.S. Postal Service marked as undeliverable.

13 6. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 of the accusation not expressly admitted. Failure to file a notice of defense shall
17 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
18 may nevertheless grant a hearing.

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
20 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4765.

21 8. California Government Code section 11520 states, in pertinent part:

22 (a) If the respondent either fails to file a notice of defense or to appear at the
23 hearing, the agency may take action based upon the respondent's express admissions
24 or upon other evidence and affidavits may be used as evidence without any notice to
25 respondent.

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4765, finds that

1 the charges and allegations in Accusation No. 4765, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,887.50 as of January 14, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Ana J. Estrada has subjected her
8 Pharmacy Technician Registration No. 59881 to discipline.

9 2. The agency has jurisdiction to adjudicate this case by default.

10 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
11 Registration based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case.:

13 a. Respondent is subject to discipline under Code section 4301, subdivision (l), in
14 that on or about December 19, 2011, in the case of *People v. Ana Jael Estrada* (Superior Court of
15 Fresno County Case No. M11920998), Respondent was convicted on her plea of nolo contendere
16 of violating Vehicle Code section 23152, subdivision (b) (Driving with a 0.08% or higher BAC),
17 a misdemeanor, and Vehicle Code section 14601.2, subdivision (a) (Driving while Privilege
18 Suspended for Prior DUI Conviction), a misdemeanor. Per the parties' stipulation, Respondent
19 admitted to two prior misdemeanor convictions on April 7, 2009 (Superior Court, San Luis
20 Obispo Case No. M430260) and December 19, 2011 (Superior Court, Fresno Case No.
21 M10915008), for violating Vehicle Code section 23152, subdivision (b) (Driving with a 0.08% or
22 higher BAC). Respondent also admitted that her BAC was .19%. The facts and circumstances
23 were that on or about September 25, 2011, a highway patrol officer observed a vehicle weaving in
24 and out of its lane in Fresno County. An enforcement stop was initiated and the driver was
25 identified as Respondent. The officer could smell the odor of alcohol emitting from the vehicle
26 and from Respondent. Respondent admitted to the officer to drinking several alcoholic
27 beverages. A series of field sobriety tests were administered which Respondent did not complete
28

1 as demonstrated. Her Blood Alcohol Content (BAC) was recorded variously within fifteen
2 minutes as .158%, .168%, and .13%.

3 b. Respondent is subject to discipline under Code section 4301, subdivision (h),
4 for unprofessional conduct, in that on or about September 25, 2011, Respondent used alcoholic
5 beverages to an extent or in a manner dangerous or injurious to herself and the public when she
6 operated a vehicle while under the influence of alcohol, as more fully set forth above in paragraph
7 3, subpart a.

8 c. Respondent is subject to disciplinary action under section 4301, subdivision (k),
9 for unprofessional conduct, in that on or about April 7, 2009 and December 19, 2011, Respondent
10 was convicted of misdemeanor violations of Vehicle Code section 23152, subdivision (b), as
11 more fully set forth above in paragraph 3, subpart a.

12 d. Respondent is subject to discipline under Code section 4301, subdivision (o), in
13 that Respondent violated the laws and regulations governing pharmacy, as more fully set forth
14 above in paragraph 3, subpart a.

15 e. To determine the degree of discipline to be imposed on Respondent,
16 Complainant alleges that effective on or about December 10, 2010, in a prior action, the Board of
17 Pharmacy issued Citation Number CI 2008 39499, based on Respondent's conviction on April 7,
18 2009, in the matter of People v. Ana Jael Estrada (Superior Court, San Luis Obispo County Case
19 No. M000430260), of violation of Vehicle Code 23152, subdivision (b) (DUI with 0.08% or
20 higher BAC), a misdemeanor.

21 **ORDER**

22 IT IS SO ORDERED that Pharmacy Technician Registration No. 59881, heretofore issued
23 to Respondent Ana J. Estrada, is revoked.

24 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
25 written motion requesting that the Decision be vacated and stating the grounds relied on within
26 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
27 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

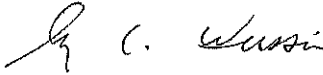
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

This Decision shall become effective on March 27, 2014.

It is so ORDERED February 25, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

11255102.DOC
DOJ Matter ID:SA2013112054

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation No. 4765

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STEPHANIE ALAMO-LATIF
Deputy Attorney General
4 State Bar No. 283580
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-6819
Facsimile: (916) 327-8643
7 E-mail: Stephanie.AlamoLatif@doj.ca.gov
Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:
13 **ANA J. ESTRADA**
3029 E. Illinois Ave.
14 Fresno, CA 93701
15 **Pharmacy Technician Registration No.**
59881
16
17 Respondent.

Case No. 4765

ACCUSATION

18
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

- 21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about August 5, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number 59881 to Ana J. Estrada ("Respondent"). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2015, unless renewed.

27 \\\
28 \\\

1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Code section 4300 states, in pertinent part, that every license issued may be suspended
6 or revoked.

7 5. Code section 4300.1 states:

8 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
9 of law or by order or decision of the board or a court of law, the placement of a license on a
10 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
11 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
12 against, the licensee or to render a decision suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 6. Code section 4301 states, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of unprofessional
16 conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

17 ...

18 (h) The use of alcoholic beverages to the extent or in a manner as to be dangerous or
19 injurious to oneself, or to any other person or to the public, or to the extent that the use impairs
20 the ability of the person to conduct with safety to the public the practice authorized by the license.

21 ...

22 "(k) The conviction of more than one misdemeanor or any felony involving the use,
23 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
24 combination of those substances."

25 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
26 of a licensee under this chapter.

27 ...

28 ///

1 "o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by the
4 board or by any other state or federal regulatory agency."

5 **COST RECOVERY**

6 7. Code section 125.3 provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licentiate found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
10 renewed or reinstated.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of Crime)**

13 8. Respondent is subject to discipline under Code section 4301, subdivision (f), in that on
14 or about December 19, 2011, in the case of *People v. Ana Jael Estrada* (Superior Court of Fresno
15 County Case No. M11920998), Respondent was convicted on her plea of nolo contendere of
16 violating Vehicle Code section 23152, subdivision (b) (Driving with a 0.08% or higher BAC), a
17 misdemeanor, and Vehicle Code section 14601.2, subdivision (a) (Driving while Privilege
18 Suspended for Prior DUI Conviction), a misdemeanor. Per the parties' stipulation, Respondent
19 admitted to two prior misdemeanor convictions on April 7, 2009 (Superior Court, San Luis
20 Obispo Case No. M430260) and December 19, 2011¹ (Superior Court, Fresno Case No.
21 M10915008), for violating Vehicle Code section 23152, subdivision (b) (Driving with a 0.08% or
22 higher BAC). Respondent also admitted that her BAC was .19%. The facts and circumstances are
23 as follows:

24 9. On or about September 25, 2011, a highway patrol officer observed a vehicle weaving
25 in and out of its lane in Fresno County. An enforcement stop was initiated and the driver was

26 ¹ Case Number M10915008 was based on Respondent's arrest on February 8, 2010. This
27 case ran concurrently with Case Number M11920998. Per the Respondent's plea agreement, she
28 was convicted in Case Number M10915008 on December 19, 2011, and this conviction served as
a prior in Case Number M11920998, with the same conviction date of December 19, 2011.

1 identified as Respondent. The officer could smell the odor of alcohol emitting from the vehicle
2 and from Respondent. Respondent admitted to the officer to drinking several alcoholic beverages.
3 A series of field sobriety tests were administered which Respondent did not complete as
4 demonstrated. Her Blood Alcohol Content (BAC) was recorded variously within fifteen minutes
5 as .158%, .168%, and .13%.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Dangerous Use of Alcohol)**

8 10. Respondent is subject to discipline under Code section 4301, subdivision (h), for
9 unprofessional conduct, in that on or about September 25, 2011, Respondent used alcoholic
10 beverages to an extent or in a manner dangerous or injurious to herself and the public when she
11 operated a vehicle while under the influence of alcohol, as more fully set forth above in paragraphs
12 8 and 9.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Conviction of More than One Misdemeanor Involving Use of Alcoholic Beverages)**

15 11. Respondent is subject to disciplinary action under section 4301, subdivision (k), for
16 unprofessional conduct, in that on or about April 7, 2009 and December 19, 2011, Respondent
17 was convicted of misdemeanor violations of Vehicle Code section 23152, subdivision (b), as more
18 fully set forth above in paragraphs 8 and 9.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violating laws of pharmacy)**

21 12. Respondent is subject to discipline under Code section 4301, subdivision (o), in that
22 Respondent violated the laws and regulations governing pharmacy, as more fully set forth above in
23 paragraphs 8 through 11.

24 **DISCIPLINE CONSIDERATIONS**

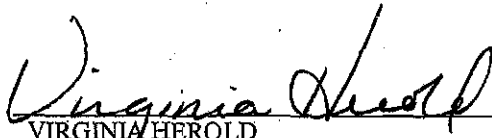
25 13. To determine the degree of discipline to be imposed on Respondent, Complainant
26 alleges that effective on or about December 10, 2010; in a prior action, the Board of Pharmacy
27 issued Citation Number CI 2008 39499, based on Respondent's conviction on April 7, 2009, in the
28 matter of *People v. Ana Jael Estrada* (Superior Court, San Luis Obispo County Case No.

1 M000430260), of violation of Vehicle Code 23152, subdivision (b) (DUI with 0.08% or higher
2 BAC), a misdemeanor.

3 **PRAYER**

4 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

- 6 1. Revoking or suspending Pharmacy Technician Registration Number 59881, issued to
7 Ana J. Estrada,;
- 8 2. Ordering Ana J. Estrada to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 10/21/13 
15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SA2013112054
22 11151585.doc